
Costs Decision

Site visit made on 16 December 2016

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 March 2017

Costs application in relation to Appeal Ref: APP/Y5420/C/16/3145096 Land and building(s) known as 109 Gladesmore Road, London N15 6TL

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr David Piller for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against an enforcement notice alleging the unauthorised erection of a single storey rear extension.
-

Decision: The application is refused

1. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These include where a local planning authority provided information that is shown to be manifestly inaccurate or untrue, or displays a lack of co-operation with other parties.
 2. The essence of the applicant's case is that the Council should have been aware that in, determining that Prior Approval was not required for a single storey rear extension to the property, that planning permission was in fact required for it. That information was not conveyed to the appellant and, notwithstanding reference to the option of submitting an application for Lawful Development Certificate, this gave the appellant the misleading impression that approval had been given. The appellant considers that the Council has failed to prove that the notice was served correctly, causing the appellant to unnecessarily instruct a consultant to represent him. The appellant also considers that the Council should have offered more flexibility in terms of the steps required by the notice and the period of compliance. This lack of flexibility caused the appellant unnecessary expense in appointing a consultant to represent him on those matters.
 3. The Council concede that confirmation to the effect that Prior Approval was not required for the extension described to it may have been given in error. In any event, that is academic. The extension was not constructed in accordance with the information provided by to the Council. The Council's letter, dated 11 October 2011, confirming that Prior Approval was not required makes it very clear that it is a requirement that the extension is constructed in accordance
-

with the information provided. It was not and, whilst I acknowledge that the appellant is not himself an expert in planning matters, ultimately it is the responsibility of the land owner to ensure that development is constructed in accordance with any permissions granted or, in this case, the details provided to the Council. The Council did not act unreasonably by issuing an enforcement notice against an extension that departed significantly from the details provided to it when asked to determine whether it required Prior Approval or not.

4. The Council was able to demonstrate as part of this appeal that the enforcement notice was served on all the relevant persons according to the information available to it at that time. I am satisfied that in procedural terms the Council acted correctly in issuing the notice and did not act unreasonably.
5. I find that the steps required by the notice were not excessive in requiring the complete demolition of the extension. Permitted development rights cannot be gained retrospectively and unlawful development cannot be modified to become permitted development. An emerging line of judicial authority has indicated that, in certain circumstances, unlawful development can be modified to a point where it would otherwise accord with the tolerances of permitted development. However, development so modified does not become permitted development under the Town and Country (General Permitted Development) Order and as such is not subject to the same conditions that may apply to development permitted by that Order. In this case, that would have had significant implications in terms of the external appearance of the extension, this being one of the considerations that underpinned the reasons for issuing the notice. I am therefore satisfied that the Council did not act unreasonably by not showing greater flexibility in drafting the enforcement notice.
6. Similarly, I find no criticism of the Council in terms of the compliance period stated in the notice. In determining the period of compliance, it is incumbent upon the Council to consider not only the situation faced by the appellant but also the effect of the development subject to the notice on the occupiers of adjoining properties. For the reasons set out in my Decision, I am satisfied that the Council struck a fair balance in that respect and as such did not act unreasonably.
7. In summary, I consider that the enforcement notice was correctly issued in procedural terms and that the reasons for issuing the notice were sound. The Council acted proportionately in drafting the requirements of the notice and the period for compliance. The Council has therefore not acted unreasonably and it has not caused the appellant to incur unnecessary expense in submitting the appeal. It follows that an award of costs is not justified.

Paul Freer

INSPECTOR